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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/699,670 10/30/2000 Kenji Matsuo P/1071-1201 8232

2352 7590 12/03/2002

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1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

[REDACTED] EXAMINER

GONZALEZ, JULIO C

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/699,670	MATSUO ET AL. <i>[Signature]</i>	
	Examiner	Art Unit	
	Julio C. Gonzalez	2834	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 September 2002.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 8-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 8-11, 16-18, 22 and 23 is/are rejected.
- 7) Claim(s) 12-15 and 19-21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 October 2000 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8-11, 16-18, 22 and 23 are rejected under 35 U.S.C. 103(a) as obvious over Yamamoto et al in view of Thurn et al (Patent No. 5,659,220) and Osawa.

Yamamoto et al discloses a piezoelectric acoustic transducer having disk vibration plate 5, a hollow cylindrical support member 3 coupled to the disk 5, a piezoelectric element 6 coupled to the center of the disk 5. Also, Yamamoto discloses implicitly, a cylindrical base member 2 with a wall thickness greater than the wall thickness of support member 3. Also, a groove 2d is defined in the base member 2 and a damping member 3d is located in the groove 2d (see figure 1). However, Yamamoto does not disclose explicitly having a single base member having a wall thickness greater than a wall thickness of a support member.

On the other hand, Thurn et al discloses for the purpose of improving oscillations and reducing power losses, a vibrating disk 2 been supported by a base member which has a thicker wall than the support member (see figure 1). However, neither Yamamoto nor Thurn disclose having the support member on the cylindrical support member.

On the other hand, Osawa discloses for the purpose of reducing interference in a vibrator, a vibrating plate supported by a support member 110 and base member 121.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design a vibration apparatus as disclosed by Yamamoto and to modify the invention by explicitly disclosing a support member with a different wall thickness for the purpose of improving oscillations and reducing power losses and to place a support member on top of a base member for the purpose of reducing interference in a vibrator as disclosed by Osawa.

Response to Arguments

3. Applicant's arguments filed 09/20/02 have been fully considered but they are not persuasive.

The claims are not specific enough as to give physical or any structural description of the inner and outer regions. The claim discloses an inner and outer region on a vibration plate. Respectfully, a disk may have an inner and outer region (see figure 4 of Yamamoto et al) and if the whole disk vibrates, the inner and outer parts of the disk will also vibrate (column 5, lines 44, 45, 55, 56, Yamamoto et al) as disclosed by Yamamoto et al wherein the plate 5 vibrates together with the piezoelectric disc

6. Moreover, what is considered an outer region? An inner region?

Also, it should be emphasized that "apparatus claims must be structurally distinguishable from the prior art." MPEP 2114. In re Danly, 263 F. 2d 844, 847, 120 USPQ 528, 531 (CCPA 1959) it was held that apparatus claims must be distinguished from prior art in terms of structure rather than function. In Hewlett-Packard Co v Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), the court held that: "Apparatus claims cover what a device is, not what it does." (emphasizes in original). To emphasize the point further, the court added: "An invention need not operate differently than the prior art to be patentable, but need only be different" (emphasizes in original).

That is, in an apparatus claim, if a prior art structure discloses all of the structural elements in the claim, as well as their relative juxtaposition, then it reads on the claim, regardless of whether or not the function for which the prior art structure was intended is the same as that of the claimed invention.

4. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., having inner region and outer region correlate with the drawings of figures 1A and 1C and the outer regions to vibrate as shown in figure 1B and having both regions free to vibrate) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Allowable Subject Matter

Claims 12-15 and 19-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julio C. Gonzalez whose telephone number is (703) 305-1563. The examiner can normally be reached on M-F (8AM-5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on (703) 308-1371.

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The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 305-1341 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

A handwritten signature consisting of stylized initials and a surname.

Jcg

November 29, 2002